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INTRODUCTION

PURPOSE AND SCOPE OF THIS REPORT

This is the Sentencing Guideline Commission's fourth annual report on felony sentencing practices of Superior Court judges in Washington State. This report includes selected felony sentences from Calendar Year 1998. It includes sentences for the felonies listed in Appendix B.¹

This report is required by RCW 9.94A.105, enacted in 1995 as part of Initiative Measure No. 159.² This law requires the Commission to publish annual reports on the sentencing practices of each Superior Court judge in this state as they relate to the standard range sentencing guidelines under the Sentencing Reform Act, for specified offenses involving violence or armed offenders.³

The Commission has made every effort to ensure that this report is objective, accurate and complete. The report includes a description of Washington's felony sentencing system, the text of some of the laws that affect sentencing, definitions of terms used in the criminal justice system and other information. This information is essential to understanding the information in the tables.

Since 1984, the Superior Courts have supplied the Sentencing Guidelines Commission with a copy of each sentencing document, called a Judgment and Sentence (J&S), for every adult felony case that results in a conviction. The Commission publishes annual statistical reports summarizing that information and uses the data to estimate the impact of proposals to change sentencing laws. This report is based on Judgment and Sentence documents furnished by the Superior Courts from all 39 counties in the state. The original documents are on file with the clerk of each Superior Court and are open for public inspection and copying.

The information in this report depicts only a portion of the work of Superior Court judges. Judges hear civil cases and juvenile cases as well as adult criminal cases. Adult criminal cases include misdemeanors as well as felonies.⁴ Felonies, in turn, comprise less than 15 percent of all cases filed in the Superior Courts.⁵ They include property offenses,

¹ The Commission receives sentencing information from the county clerks and prosecuting attorneys and has attempted to obtain complete information on all sentences imposed during the report period. However, a few sentences may not have been furnished to the Commission as of the date this report was compiled. This report does not include sentences that may have been imposed for crimes committed before July 1, 1984, when the Sentencing Reform Act took effect.

² Chapter 129, Laws of 1995. This section is reproduced in Appendix A.

³ The offenses covered in this report are listed in Appendix B.

⁴ The District Courts, rather than the Superior Courts, handle the great majority of misdemeanor cases. However, Superior Courts imposed sentences in 2,688 misdemeanor cases in Calendar Year 1998. Office of Administrator for the Courts, *Caseloads of the Courts of Washington 1998*, p. 61.

⁵ In Calendar Year 1998, 280,682 cases were filed in the Superior Courts statewide. Of these, 40,807 were criminal cases against adults. Office of Administrator for the Courts, *Caseloads of the Courts of Washington 1998*, p. 42.

drug offenses and some violent offenses not involving weapons or serious injury, as well as the violent, armed offenses that are the subject of this report.

The mixture of cases heard by Superior Court judges varies from judge to judge and from county to county. For example, some judges hear only civil cases, others hear both civil and criminal cases and others spend all or part of the year hearing cases involving juveniles. Some judges are assigned to complex cases that take a long time to complete, while others may hear large numbers of cases in a short period. Therefore, the number of sentences listed in this report for any one judge depicts only a part, and sometimes only a small fragment, of the judge's work in the course of the year. If a judge's name is not included in this report, the judge did not impose any sentences for the offenses listed in Appendix B during 1998.

The information in this report is affected by a number of factors, including the number of felony cases each judge handled. Readers are urged to review the narrative portion of this report, as well as the statistical tables and notes to the tables, to understand more fully the meaning of the information presented. This is a statistical report, not a description of each case. The facts of every case are different, even though the same laws may apply. Therefore, the information in this report should not be used to compare the sentencing practices of different judges or to evaluate any judge's overall performance in office.

The Commission is grateful to the hundreds of criminal justice professionals, including judges, community corrections officers, deputy prosecuting attorneys and county clerks' staff, who prepare and furnish to the Commission the sentencing documents on which this report is based. Any comments or suggestions on how to make future editions of this report more informative would be appreciated.

FELONY SENTENCING UNDER WASHINGTON LAW

THE SENTENCING REFORM ACT

Sentencing is a judicial responsibility, but judges' discretion in adult felony cases is guided by the Sentencing Reform Act of 1981, as amended ("SRA"). The SRA requires determinate sentences, where the term of confinement is specified by the court and, with limited exceptions, is served in its entirety.⁶ There is no parole for offenders in Washington whose crimes were committed after June 30, 1984.⁷

The SRA applies to felonies committed by adults⁸ on and after July 1, 1984. The Act is intended to make the criminal justice system accountable to the public by means of a felony sentencing system that structures, but does not eliminate, discretionary decisions affecting sentences. The Legislature has enumerated the purposes of the Act as follows:

- (1) To ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and to the offender's criminal history;
- (2) To promote respect for the law by providing punishment which is just;
- (3) To ensure that the punishment imposed on any offender is commensurate with the punishment imposed on others committing similar offenses;
- (4) To protect the public;
- (5) To offer the offender an opportunity to improve him or herself;
- (6) To make frugal use of the state's and local governments' resources; and
- (7) To reduce the risk of re-offending by offenders in the community.⁹

Under the SRA, sentences are based on the crime and on the offender's prior convictions, using a "sentencing grid" established by law. Certain types of crimes, such as violent, sex, burglary and drug offenses, are given additional weight as criminal history when sentencing for new offenses of the same type.¹⁰

⁶ Offenders sentenced to jail or prison can earn early release credit through good conduct and participation in educational or work programs. State law limits earned early release time to one third of the sentence for most felonies, and 15% of the sentence for certain violent or sex offenses (See RCW 9.94A.150). Earned early release time is not available for the mandatory minimum portions of sentences for Murder 1, Assault 1, Rape 1, and Assault of a Child 1, or for any portion of life sentences or of sentence enhancements based on use of a deadly weapon.

⁷ The Indeterminate Sentence Review Board has jurisdiction over about 780 offenders still in prison under indeterminate sentences for crimes committed before July 1, 1984. The Board determines when they are to be released, if at all, before their statutory maximum terms expire.

⁸ Some juveniles (under age 18) are prosecuted as adults and, if convicted of felonies, are sentenced under the SRA. See RCW 13.04.030 and 13.40.110.

⁹ See RCW 9.94A.010.

STANDARD RANGE SENTENCES

In most cases, the sentencing grid determines the standard range of time in jail or in prison to which the court may sentence an offender. Sentences of 12 months or less are served in a county jail. Those of more than 12 months are served in state facilities operated by the Department of Corrections. Sentences within the standard range may not be appealed. The standard range is sometimes referred to as the “presumptive range.”

In certain circumstances, offenders are eligible to receive certain alternative types of standard range sentences authorized by law, where the range is modified or suspended. These include nonviolent first-time offenders, first-time sex offenders not convicted of first- or second-degree rape and sellers of small quantities of drugs. These alternative standard range sentences are permitted at the judge’s discretion, but are not required, for offenders meeting the criteria specified in RCW 9.94A.120.¹¹

A court must impose other legally-mandated sentences under specified circumstances¹². For instance, the standard range sentence for aggravated first degree murder is either death or life imprisonment, as determined by a jury.¹³ Mandatory minimum sentences apply to first degree murder, certain types of first degree assault or assault of a child and first degree rape.¹⁴ In addition, an offender who has previously been convicted of two specified “most serious offenses,” or of one specified sex offense, must receive a life sentence under the Persistent Offender Accountability Act.¹⁵

EXCEPTIONAL SENTENCES

Sentences above or below the standard range, which are not specifically authorized as alternatives or mandated by law, are called exceptional sentences. Mitigated exceptional sentences (below the standard range) may be as low as no imprisonment. Aggravated exceptional sentences (above the standard range) may be as high as the statutory

¹⁰ Appendix C(1) reproduces the sentencing grid established under RCW 9.94A.310. Appendix C(2) is the list of crimes ranked by seriousness level, found in RCW 9.94A.320. Appendix C(3) shows the rules for computing the offender score, based on criminal history, in RCW 9.94A.360. See also the Adult Sentencing Guidelines Manual, available from the Commission. Note that these laws may have been amended since the time sentences in this report were imposed.

¹¹ See Appendix D for a more complete description of these types of alternative standard range sentences, including the First-time Offender Waiver (FTOW) and the Special Sex Offender Sentencing Alternative (SSOSA).

¹² See Appendix E for a more complete description of these types of mandatory sentences.

¹³ The definition of aggravated first-degree murder, and the special sentencing procedure applied to such cases, are found in RCW Chapter 10.95. The standard range is shown in RCW 9.94A.310(1).

¹⁴ See RCW 9.94A.120(4).

¹⁵ The Act, known as “Three Strikes and You’re Out,” was adopted by a citizen initiative in 1993. The “most serious offenses” that constitute “strikes” are defined in RCW 9.94A.030. The 1996 Legislature amended that section to impose a life sentence on the second conviction of specified sex offenses (“Two Strikes and You’re Out”). See Chapter 289, Laws of 1996; see also Chapters 70 and 339, Laws of 1997. Because judges must impose life sentences on defendants found to be persistent offenders, those sentences are reported herein as standard range sentences.

maximum term allowable for the crime.¹⁶ Judges can impose exceptional sentences only if there are substantial and compelling reasons to sentence the offender above or below the standard range. The reasons justifying a judge's departure from the standard range must be set forth in written findings of fact and conclusions of law, filed with the Judgment and Sentence.¹⁷

The SRA includes an illustrative, non-exclusive list of aggravating and mitigating factors justifying exceptional sentences. The appellate courts have upheld exceptional sentences for other reasons and have also overturned sentences when the reasons were not found consistent with the purposes of the SRA.¹⁸ On occasion, a sentence within the standard range is classified as an exceptional sentence because the judge ordered the offender to meet conditions not normally authorized by law.

OTHER SENTENCES

The tables in this report include a few felony sentences that do not fall into any of the categories described above. Those sentences are most often the result of clerical errors or of miscalculation of the standard range. They most often result from errors by prosecution, correctional or clerical staff, rather than from decisions of the judges themselves. If such a sentence has been served by the time the error is detected, or if the sentence has been agreed to by the prosecution in return for the defendant's guilty plea, it generally cannot be modified.

The tables in this report also include a few sentences that judges intended to be within the standard range, but which were determined under an interpretation of statutory provisions on which Superior Court judges have differed, and where the difference has not been resolved through appeals. The standard range actually applicable in those cases depends on resolution of the legal issues in dispute.¹⁹ The sentences for those cases are listed as "other" in the tables of this report.

This report does not include any sentences that may have been imposed for crimes committed before July 1, 1984, when the SRA took effect. Such sentences, if any, are indeterminate and cannot be recorded in the Commission's database.

¹⁶ Felonies are classified as Class A, B or C. For most felonies, the maximum possible sentence is life imprisonment for Class A, ten years for Class B and five years for Class C (RCW 9A.20.021). If the statute creating a felony does not provide a classification, the classification is based on the maximum term of imprisonment authorized for the first conviction: Class A if the term is 20 years or more, Class B if it is at least eight but less than 20 years; Class C if it is less than eight years (RCW 9.94A.035). If the statute creating a felony provides neither a classification nor a maximum sentence, it is presumed to be a Class B felony with a ten-year maximum sentence (RCW 9.92.010). Maximum sentences include fines as well as imprisonment.

¹⁷ See RCW 9.94A.120(2) and (3).

¹⁸ The illustrative list of reasons for exceptional sentences is at RCW 9.94A.390. A substantial body of case law has developed on the reasons that do and do not justify exceptional sentences.

¹⁹ See Appendix F for a more complete description of those legal issues.

CONSECUTIVE AND CONCURRENT SENTENCING

When an offender is sentenced at the same time for more than one offense, the sentences must be served concurrently (at the same time), except for serious violent offenses, which must be served consecutively (one after the other). When sentences run concurrently, each conviction is counted as part of the offender's criminal history, so the sentence for the more serious offense is longer than it would be without the additional convictions.²⁰

FACTORS TO CONSIDER IN REVIEWING THIS REPORT

PROSECUTORS' CHARGING AND PLEA NEGOTIATING PRACTICES

State law includes standards to guide prosecutors' decisions about charging and plea agreements. However, those guidelines are only advisory.²¹ There are variations in the charging and plea negotiation practices and policies used by prosecutors in each of the state's 39 counties. This means that the same criminal conduct may result in different sentences for different offenders, depending on charging and plea disposition policies in different counties, and on negotiations and agreements between the prosecution and the defense in particular cases.

For example, a judge might impose different sentences in different cases involving the same criminal conduct by defendants with identical criminal histories, as a result of any of the following types of plea agreements between the prosecutor and the defendant:

- The prosecutor reduced the charge in return for the defendant's plea of guilty, resulting in a sentence shorter than would have applied to the crime originally charged;
- The charge was not reduced, but the prosecutor recommended a shorter sentence in return for the defendant's plea of guilty to the same charge; or
- The charge was not reduced, but the prosecutor agreed not to file additional or more serious charges in return for the defendant's plea of guilty to the original charge. Such an agreement would result in a shorter sentence than if the defendant had been convicted of additional charges.

Differences in plea agreements might also result in the same sentences being imposed in cases where the defendants engaged in different criminal conduct. All the statistical information in this report should be viewed in light of these realities.

²⁰ See RCW 9.94A.400 (in Appendix C(4)) for the standards for concurrent and consecutive sentencing. "Serious violent offenses," sentenced consecutively to each other, are defined in RCW 9.94A.030 as Murder 1 and 2, Manslaughter 1, Homicide by Abuse, Assault 1, Kidnapping 1, Rape 1, Assault of a Child 1, or attempts, solicitations or conspiracies to commit these offenses.

²¹ See RCW 9.94A.430-460 (in Appendix C(6)).

JUDICIAL DISCRETION AND PLEA AGREEMENTS

Washington's determinate sentencing system restricts judicial discretion, in most cases, to deciding what term of confinement to impose within the standard sentence range and what other conditions to apply. After a defendant has been convicted of a specific offense, the judge holds a sentencing hearing where the prosecutor and defense counsel may make recommendations. These recommendations are often based on a plea agreement.²² In most cases, the standard range for the term of confinement is determined by the offense the prosecutor has charged and by the offender's criminal history, which is a matter of record.

Over 90 percent of felony convictions in Washington result from pleas of guilty rather than from trials. Most defendants who plead guilty do so as part of an agreement that will affect the sentence they receive. Such an agreement is with the prosecutor and not with the judge. In fact, judges are prohibited from taking part in plea negotiations.²³ Judges are not bound by sentencing recommendations based on plea agreements, but they have the authority to reject plea agreements only when the judge finds that the agreement is not consistent with the interests of justice.²⁴

PROSECUTORS' RECOMMENDATIONS

Initiative 159 requires that, when an exceptional sentence is imposed above or below the standard range, the Judgment and Sentence must indicate whether "a similar sentence" was recommended by the prosecutor.²⁵ This information is occasionally not provided on all J&S documents received by the Commission, sometimes because the prosecutor did not make any recommendation. In cases where the J&S shows that the prosecutor recommended a similar sentence, the recommendation was for the type of sentence given, but not necessarily the specific sentence. For example, a prosecutor might have recommended an exceptional sentence of a certain length, but not of the length actually imposed.

JUDGES' WORKLOADS

The Superior Courts in different counties divide judicial workloads in different ways. Some judges are assigned to certain types of felony cases, others to other types of felonies or to different kinds of cases altogether. Assignment patterns in large counties, where there may be dozens of judges, differ from those in small counties, where there are only one or two. These assignment patterns can produce different sentencing patterns based on the kinds of cases assigned, not the choices the judges make. The number of sentences listed in this report for any judge is not an indication of the judge's overall workload.

²² RCW 9.94A.080 authorizes such negotiations and agreements. See Appendix C(5).

²³ See RCW 9.94A.080 (in Appendix C(5)).

²⁴ See RCW 9.94A.090 (in Appendix C(5)).

²⁵ RCW 9.94A.105(4) (See Appendix A).

LIMITATIONS OF THE DATA

The sentencing practices described in this report relate only to the violent, armed crimes designated for reporting in Initiative 159 (listed in Appendix B). These crimes are more severe than most other felonies and usually carry more severe sentences. Therefore, this report does not reflect sentencing practices for all felonies.

Statistics are particularly difficult to interpret when they apply to a very small number of cases. Many judges sentenced only a few people because they spent most of the year hearing civil cases, working in other stages of criminal case processing or fulfilling administrative responsibilities. The number of sentences a judge imposed does not reflect that judge's overall workload or performance.

HOW TO READ THE TABLES IN THIS REPORT

NAME OF JUDGE

The reported under a judge's name are all those cases in which the judge imposed cases a felony sentence for an offense required to be included in this report. This report includes all regular and *pro tem* judges of the Superior Court who imposed such sentences during 1998. If a judge is not listed in the tables, he or she did not impose any sentences subject to this report in 1998. The judges are listed alphabetically on a statewide basis.

COUNTY

The county listed for each offense is the county in which the case was filed and in which the judge imposed the sentence. Some judges serve in more than one county, either because counties have combined their Superior Court systems or because judges serve as visiting judges in different counties to hear particular cases.

CAUSE NUMBER

The cause number listed for each case is the same number filed in the county clerk's office. This is a unique identifying number (within each county) that can be used to retrieve, from the county clerk, the original Judgment and Sentence and other documents filed in the case.

VERDICT

"Plea" means the conviction was based on a plea of guilty by the defendant. This plea may have been entered as part of an agreement with the prosecutor, subject to court approval. "Jury" means the conviction was based on a jury's finding of guilt after a trial. "Bench" means the conviction was based on a judge's finding of guilt after a trial without a jury.

MOST SERIOUS CURRENT OFFENSE

The most serious current is the offense for which the offender was sentenced. If the offense shown is not among those required to be reported (see list in Appendix B), it was accompanied by a reportable offense with a shorter sentence. The sentence shown reflects both the reportable offense and any other offenses sentenced in the same case. Sentences for multiple offenses may run either concurrently or consecutively, depending on the offenses involved.²⁶

SENTENCE TYPE

- **Standard Sentence Range**
The most common type of sentence is one that is within the range determined by the seriousness level of the current offense and by the number and type of previous convictions, using the sentencing grid (see Appendix C). Standard range sentences include life sentences for persistent offenders and life or death sentences for aggravated first-degree murder.
- **Aggravated Exceptional**
An aggravated exceptional sentence is above the standard range, based on substantial and compelling reasons stated in writing by the judge.
- **Mitigated Exceptional**
A mitigated exceptional sentence is below the standard range, based on substantial and compelling reasons stated in writing by the judge.
- **Within Exceptional**
A sentence within the standard range is considered exceptional when conditions not otherwise authorized by law are imposed, based on substantial and compelling reasons stated in writing by the judge.
- **First-time Offender Waiver (FTOW)**
The FTOW is an “alternative standard range” sentence that may include up to 90 days confinement and affirmative conditions. The standard range displayed for such a sentence is the range that would have applied if the offender had not been classified as a First-time Offender. See Appendix D.
- **Special Sex Offender Sentencing Alternative (SSOSA)**
Under SSOSA, the standard sentence range is suspended, conditioned on up to six months in jail and completion of sex offender treatment. The sentence shown is the sentence the court suspended. See Appendix D.

²⁶ See RCW 9.94A.400 (in Appendix C(4)) for standards governing whether sentences run concurrently or consecutively, and how multiple offenses affect the offender’s criminal history for purposes of determining the standard range.

SENTENCE IMPOSED (MONTHS)

The term of confinement ordered by the court is displayed in months, rounded to two decimal places. This term may be reduced by earned release credit.²⁷ For SSOSA sentences, the sentence displayed is what was imposed and then suspended, conditioned on up to six months in jail and completion of sex offender treatment.

STANDARD RANGE: MINIMUM AND MAXIMUM (MIN. - MAX.)

The range of months of confinement within which the standard sentence range would fall is displayed, based on the offense of conviction and on the offender's criminal history. In some cases, such as anticipatory offenses, there is a difference between the standard range and the actual sentence due to rounding.

PROSECUTOR RECOMMENDED SIMILAR SENTENCE

This information appears for exceptional sentences and for sentences under the FTOW and SSOSA alternatives. "Yes" means the J&S indicated that the prosecutor recommended a sentence of the same type as the judge imposed. "No" means the J&S indicated that the prosecutor did not recommend such a sentence. "Unknown" means there was no indication on the J&S of a prosecutor's recommendation.

REASONS FOR EXCEPTIONAL SENTENCE

The reasons for a court's decision to impose an exceptional sentence are shown in the findings of fact and conclusions of law filed with the J&S. These are categories of reasons that are used in the Commission's statistical reports, rather than verbatim quotations from court documents. The findings and conclusions, including the exact language used by the court, are on file with the county clerk.

²⁷ See RCW 9.94A.150.